

Department of Defence

DEFGRAM NO 781/2009

7 December 2009

Note: DEFGRAMS need only be retained while the information is relevant. Publications can be accessed on the Defence Intranet at

PARLIAMENTARY COMMITTEES: DEFENCE SUBMISSIONS AND WITNESSES

The purpose of this DEFGRAM is to remind staff about the correct procedures to be followed in their dealings with parliamentary committees, especially when called upon to prepare a submission to a committee, or to appear as a witness.

The Minister for Defence is accountable to the Parliament for all information and material provided to a parliamentary committee or inquiry by Defence personnel. *Consequently, the Minister must approve all Defence involvement in, or support to, parliamentary committees.*

Providing information to parliamentary committees or inquiries

All requests from parliamentary committees for Defence material, assistance or witnesses are usually forwarded to Defence through the Minister for Defence, the Secretary and the Chief of the Defence Force. From time to time, a committee may approach Departmental officers directly either to provide material or to attend as a witness. These requests must be referred immediately to the Director Ministerial and Parliamentary Reporting (DMPR) for whole-of-Defence coordination through the Minister's office prior to any action being taken (DMPR contact details appear below). Departmental officers should not deal directly with parliamentary committee members or staff.

Preparing submissions

When formally tasked to prepare a submission to a parliamentary committee or inquiry, you should note that, except under special circumstances, submissions will be placed on the public record. Consequently, they should not include classified or protected material.

All material prepared for submission to parliamentary committees should be cleared by a Senior Executive Band Two or two-star officer, or above, prior to it being submitted to the Minister for approval. *Under no circumstances should material be provided to parliamentary committees or inquiries without clearance from the Minister.*

Appearing as a witness

The official guidelines for Commonwealth Officers (which includes military personnel) attending as witnesses to a parliamentary committee can be found at: http://www.pmc.gov.au/guidelines/docs/official_witnesses.pdf.

Should you be required to appear as a witness before a parliamentary committee or inquiry, please ensure that your name is included in the official witness list prior to the commencement of the hearing. It is also important that your Group or Service coordination team is made aware of your appearance in plenty of time for arrangements to be made.

The transcripts of every parliamentary committee hearing or inquiry—known as Hansard—will be available in proof form from the Parliament House website: <http://www.aph.gov.au/hansard/index.htm> in the days following the hearing. If you appeared as a witness, you should check the proof Hansard to ensure that your evidence was accurately recorded or to correct mistakes in your evidence before the final Hansard is published. Clearance of the proof Hansard is usually done in consultation with, and through, Ministerial and Parliamentary Reporting (MPR). Similarly, if you need to provide a formal correction or clarification of your evidence this should be done in consultation with, and through, MPR as there are established procedures that must be followed for this to occur.

This information is updated regularly and can be sourced from the Ministerial and Executive Support Branch website

Department of Defence

INFORMATION DEFGRAM NO 804/2009

Issue Date: 17 December 2009

Expiry Date: 11 March 2010

DEFENCE'S INVOLVEMENT IN THE SENATE INQUIRY BEING UNDERTAKEN INTO ALLEGED INAPPROPRIATE EVENTS THAT OCCURRED IN HMAS SUCCESS

1. We were recently made aware that the Senate Standing Committee on Foreign Affairs, Defence and Trade is conducting an inquiry into equity and diversity health checks in the Royal Australian Navy as they relate to recent events that occurred in HMAS SUCCESS.
2. We have also been informed that a number of members of Defence, both military and civilian, have been directly written to by the committee seeking their involvement in this inquiry.
3. The inquiry that is being conducted into alleged events that occurred in HMAS SUCCESS is sensitive. The inquiry's Terms of Reference cover events that are already the subject of various Defence investigations and inquiries. We also respect the seriousness of the subject of this Senate inquiry and recognise the committee's right to examine these matters.
4. For this reason the Minister for Defence has approved an approach that is being managed by the Ministerial and Executive Support Branch that carefully balances this right and does not interfere with Defence's internal investigative processes.
5. Defence will provide the committee early in 2010 with a range of documents that inform how the department conducts inquiries and also provides information about the status of relevant ongoing Defence investigations and inquiries.
6. Consistent with this approach, individuals with a professional interest in the committee's inquiry will be asked to provide input.
7. At this time, we would also like to remind all members of Defence of their obligations when it comes to participating in parliamentary committee inquiries and hearings in their official capacity. To this end we direct staff to the *Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters* of November 1989. DEFGRAM 781/2009—*Parliamentary Committees: Defence submissions and witnesses* of 07 December 2009 provides specific guidance as to how the Government Guidelines will be implemented in Defence. This DEFGRAM is available via the following link
8. Please note that the above DEFGRAM relates only to your *professional involvement* as a member of Defence. You are, of course, able to freely participate in parliamentary committee activities as a private citizen.
9. If you are considering becoming involved in the Senate's inquiry into HMAS SUCCESS or you would like to discuss this inquiry further please contact:

Director, Ministerial and Parliamentary Reporting
Ministerial and Executive Support Branch


Secretary

A Houston
Air Chief Marshal
Chief of the Defence Force

Distribution: 1, 2, 3, 4, 5, 6, 9A, 12, 14

Department of Defence

INFORMATION DEFGRAM NO 39/2010

Issue Date: 3 February 2010

Expiry Date: 5 May 2010

PARLIAMENTARY COMMITTEE INQUIRIES: OFFICIAL DEFENCE PARTICIPATION AND YOUR RIGHTS AS A PRIVATE CITIZEN

Scope and purpose of this DEFGRAM

1. The purpose of this DEFGRAM is to provide guidance to Defence personnel (including both civilian and military personnel) on internal Defence procedures for coordinating official participation of Defence personnel (ie participation of such personnel *on behalf* of Defence) in inquiries conducted by parliamentary committees.
2. The opportunity for Defence personnel to participate in an official capacity in a parliamentary committee inquiry usually arises at the request or demand of a committee that Defence provide information, but where the committee does not request or demand that *particular* Defence personnel provide information.
3. This advice does not apply where a committee requests or demands *particular* Defence personnel provide information. In that rare case, the particular personnel concerned should consult with the Director Ministerial and Parliamentary Reporting (DMPR), who may advise them on how they may best comply with the committee's request or demand.
4. Defence also recognises the right of all Defence personnel to participate in parliamentary committee inquiries in their personal capacity, and does not seek to deter personnel from doing so. Paragraphs 17 to 20 of this advice relate to such participation; otherwise, this advice does not apply to such participation.
5. This advice reflects the *Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters*, released in November 1989 (the Government Guidelines). The Government Guidelines can be accessed at http://www.pmc.gov.au/guidelines/docs/official_witnesses.pdf. Defence personnel are encouraged to familiarise themselves with the content of the Government Guidelines.
6. The Houses of Parliament each delegate some of their functions, and the powers to carry out those functions, to committees of their members. One such function commonly delegated to committees is the conduct of inquiries, including (but not limited to) inquiries into policy-related matters, and inquiries into the performance of government agencies or programs. The Minister for Defence is accountable to the Parliament for his or her actions, and the Secretary must assist the Minister to fulfil his or her obligation to the Parliament to provide factual information, as required by the Parliament, in relation to the operation and administration of Defence.
7. It is important that Defence personnel recognise the key role that the Parliament's committee system plays in ensuring open and accountable government in Australia. Defence's engagement with parliamentary committees must be thorough and cooperative.

Participating in parliamentary committee inquiries in an official capacity

8. Generally, participation by Defence personnel in a parliamentary committee inquiry must be approved by the Minister.
9. However, as noted in paragraph 2.5 of the Government Guidelines, Ministerial approval of such participation may not always be appropriate. It may not be appropriate for the Minister to approve the participation of Defence personnel when the inquiry concerns the conduct of particular individuals, e.g. the conduct of the Minister himself or herself or the conduct of a member of the Minister's staff. In these cases, Defence personnel should consult DMPR, who may advise them on alternative arrangements for the approval and coordination of Defence participation in the inquiry.

10. If Defence personnel are contacted by a committee, inviting or requiring Defence to participate in an inquiry, or where Defence personnel otherwise become aware of the potential for Defence to participate in an inquiry, they should contact DMPR in order to facilitate whole of Defence coordination through the Minister's office prior to any action being taken.

11. It is rare that an inquiry of a parliamentary committee will relate only to one discrete area within Defence. To ensure that all stakeholders are aware of a committee's activities, as well as to ensure the clarity and accuracy of the advice provided to our Minister and the committee, DMPR will centrally manage the internal consultation processes and liaise closely with the committee secretariat.

Preparing submissions

12. DMPR, in consultation with relevant Defence area(s), will make a recommendation to the Minister on whether a submission should be made. If formally tasked to prepare a submission to a parliamentary committee, Defence personnel should note that, except under special circumstances, submissions will be placed on the public record. Consequently, they should generally not include classified or protected material. Additional guidance should be sought from DMPR where it is possible that classified or protected material will be relevant to the submission.

13. Defence personnel preparing material for parliamentary committees on behalf of Defence must ensure that such material is cleared by a Senior Executive Band Two or Two Star officer, or above, and forwarded to DMPR for action.

Appearing as a witness

14. To ensure that all Defence appearances are appropriately coordinated, the relevant Group or Service coordination team should be made aware of the appearance of Defence personnel in their official capacity in sufficient time for appropriate arrangements to be made. DMPR will work with the relevant Group or Service coordination team to assist in identifying suitable witnesses and ensuring, where appropriate, that the Minister is aware of Defence's involvement and that the committee's secretariat is informed of attendance arrangements. In some cases, it will be appropriate for Defence personnel individually to contact the committee to confirm that their name appears on the relevant witness list. Normally, Defence is represented at committee hearings by personnel at the SES Band 1 or One Star rank, or above.

15. The transcripts of every parliamentary committee hearing or inquiry—known as the Hansard—are available in proof form from the Parliament House web site (<http://www.aph.gov.au/hansard/index.htm>) in the days following the hearing. If Defence personnel appear as witnesses, they must check the proof Hansard to ensure that their evidence has been accurately recorded with a view to correcting any errors before the final Hansard is published.

16. If, after perusing the record, Defence personnel consider that there are any errors in the record, or that they have omitted to give some relevant evidence, they may consult with DMPR. DMPR can advise on procedures for the correction of errors before the final Hansard is published, and for the provision of further evidence to the committee.

Participating in parliamentary committee inquiries in a personal capacity

17. Irrespective of whether Defence is participating in an inquiry of a parliamentary committee, Defence personnel are able freely to participate in an inquiry in their personal capacity. Such personal participation may be by way of making a submission, appearing as a witness at a hearing, or corresponding with committee members or a committee's secretariat. Further information on Parliament's committees is available on the Australian Parliament House website, www.aph.gov.au.

18. Paragraph 2.50 of the Government Guidelines provides guidance on the appearance at inquiries of officials in their personal capacity. This paragraph states that:

'There is no intention for there to be any restriction on officers appearing before parliamentary committees in their personal capacity. An officer so called, however, should pay heed to the guidelines relating to public comment contained in the Guidelines on Official Conduct of Commonwealth Public Servants (July 1987). As the guidelines emphasise, it is particularly important for senior officials to give careful consideration to the impact, by virtue of their positions, of any comment they might make. Indeed, heads of agencies and other very senior officers need to consider carefully whether, in particular cases, it is

possible for them realistically to claim to appear in a 'personal' rather than an 'official' capacity, particularly if they are likely to be asked to comment on matters which fall within or impinge on their area of responsibility. An officer who is appearing before a committee in a personal capacity should make it clear to the committee that the officer's appearance is not in an official capacity.'

19. The guidelines on official conduct of Commonwealth Public Servants were updated in 1995, and are available from the Australian Public Service Commission's website at the follow link: <http://www.apsc.gov.au/publications96/conduct.pdf>.

20. Should Defence personnel decide to participate in an inquiry in their personal capacity, they are not obliged to inform DMPR or any other part of Defence of this decision.

Further information

21. Further information on Defence's official involvement with the Parliament and its committees is updated regularly and can be sourced from the Ministerial and Executive Support Branch website

IJ Watt
Secretary

AG Houston
Air Chief Marshal
Chief of the Defence Force

Distribution: 1, 2, 3, 4, 5, 6, 9A, 12, 14